

Senator Daniel Hemmert proposes the following substitute bill:

RAILROAD RIGHT-OF-WAY AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel Hemmert

House Sponsor: Carl R. Albrecht

LONG TITLE

General Description:

This bill enacts provisions related to fiber optic carrier crossings of railroad rights-of-way.

Highlighted Provisions:

This bill:

- ▶ requires a fiber optic carrier that intends to place a facility across or upon a railroad right-of-way to submit a request for permission from the railroad prior to placing a facility;
- ▶ establishes procedures for a fiber optic carrier to request permission from a railroad;
- ▶ allows railroads to impose certain requirements prior to granting permission for a fiber optic carrier crossing of a railroad right-of-way;
- ▶ establishes a standard fee that may be charged for each facility placed by a fiber optic carrier across a railroad right-of-way;
- ▶ allows a fiber optic carrier or railroad to petition the Public Service Commission if the parties are unable to resolve an objection; and
- ▶ defines terms.

Money Appropriated in this Bill:

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

- 30 **54-23-101**, Utah Code Annotated 1953
- 31 **54-23-102**, Utah Code Annotated 1953
- 32 **54-23-103**, Utah Code Annotated 1953
- 33 **54-23-104**, Utah Code Annotated 1953
- 34 **54-23-105**, Utah Code Annotated 1953
- 35 **54-23-106**, Utah Code Annotated 1953
- 36 **54-23-107**, Utah Code Annotated 1953
- 37 **54-23-108**, Utah Code Annotated 1953

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39 *Be it enacted by the Legislature of the state of Utah:*

40 Section 1. Section **54-23-101** is enacted to read:

41 **CHAPTER 23. CROSSING RAILROAD RIGHTS-OF-WAY BY FIBER**
 42 **OPTIC CARRIERS**

43 **54-23-101. Title.**

44 This chapter is known as "Crossing Railroad Rights-of-Way by Fiber Optic Carriers."

45 Section 2. Section **54-23-102** is enacted to read:

46 **54-23-102. Definitions.**

47 As used in this chapter:

48 (1) "Consumer price index" means the Consumer Price Index for All Urban
 49 Consumers: All Items Less Food & Energy, as published by the Bureau of Labor Statistics of
 50 the United States Department of Labor.

51 (2) (a) "Crossing" means a telecommunications facility constructed over, under, or
 52 across a railroad right-of-way:

53 (i) at an angle between 80 degrees and 100 degrees;

54 (ii) with a minimum depth of 10 feet; and

55 (iii) within a county that is not a county of the first class.

56 (b) "Crossing" does not include longitudinal occupancy of railroad right-of-way.

57 (3) "Facility" or "telecommunications facility" means fiber optics or related conduit
58 installed in a crossing.

59 (4) "Fiber optic carrier" means a telecommunications corporation or a
60 telecommunications corporation's contractor or agent.

61 Section 3. Section **54-23-103** is enacted to read:

62 **54-23-103. Right-of-way crossing -- application for permission.**

63 (1) (a) Any fiber optic carrier that intends to place a facility across or upon a railroad
64 right-of-way shall submit a request for permission from the railroad prior to placing a facility.

65 (b) A request under this Subsection (1) shall:

66 (i) be in the form of a completed crossing application;

67 (ii) include an engineering design that:

68 (A) shows the location of the proposed crossing and the railroad's property, tracks, and
69 wires that the telecommunications facility will cross; and

70 (B) conforms with guidelines published in the most recent edition of the National
71 Electric Safety Code; and

72 (iii) include the standard crossing fee specified in Section [54-23-105](#).

73 (2) Unless the railroad provides written or electronic notice to the utility that the
74 proposed crossing is a serious threat to the safe operations of the railroad or to the current use
75 of the railroad right-of-way, the railroad shall approve the application within 35 calendar days
76 after the receipt of a completed application for a crossing.

77 (3) This section applies to:

78 (a) any crossing in existence before May 14, 2019, if an agreement concerning the
79 crossing has expired or has been terminated; and

80 (b) any crossing commenced on or after May 14, 2019.

81 (4) If an applicant that intends to place a facility across or upon a railroad right-of-way
82 at a crossing described in Subsection (3)(a) has paid a collective amount that equals or exceeds
83 the standard crossing fee established under Section [54-23-105](#) to the railroad during the
84 existence of the crossing, no additional fee may be required.

85 Section 4. Section **54-23-104** is enacted to read:

86 **54-23-104. Right-of-way crossing -- Construction.**

87 Unless the railroad notifies the fiber optic carrier in writing or electronically that the

88 approved crossing is a serious threat to the safe operation of the railroad or to the current use of
89 the railroad right-of-way, the railroad shall issue the contractor's right of entry and schedule
90 flagging to occur within 45 calendar days of the approved application.

91 Section 5. Section **54-23-105** is enacted to read:

92 **54-23-105. Standard crossing fee.**

93 (1) Unless otherwise agreed by the parties, a fiber optic carrier that crosses a railroad
94 right-of-way, other than a crossing within a public right-of-way, shall pay the railroad a
95 one-time standard crossing fee of \$1,250, adjusted as provided in Subsection (6), for each
96 crossing.

97 (2) (a) Except as otherwise provided in this chapter, the standard crossing fee is paid in
98 lieu of any license, permit, application, processing fee, or any other fee or charge to reimburse
99 the railroad for direct expenses incurred by the railroad as a result of the crossing.

100 (b) Except as otherwise provided in this chapter, no other fee or charge related to the
101 crossing may be assessed to the fiber optic carrier by the railroad.

102 (3) In addition to the standard crossing fee, the fiber optic carrier shall also reimburse
103 the railroad for any reasonable and necessary flagging expense associated with a crossing,
104 based on the railroad traffic at the crossing.

105 (4) A railroad may not require a crossing fee if:

106 (a) the crossing is within a public right-of-way; and

107 (b) the property is not owned by the railroad.

108 (5) (a) The placement of a single conduit is limited to a single applicant, and the
109 conduit's contents are a single facility.

110 (b) No additional fees are payable based on the individual fibers, wires, lines, or other
111 items contained within a single conduit.

112 (6) On January 1 of each year, the standard crossing fee under Subsection (1) shall be
113 adjusted by multiplying the current standard crossing fee by the sum of:

114 (a) one; and

115 (b) the actual percent change of the consumer price index during the most recent
116 12-month period for which data is available.

117 Section 6. Section **54-23-106** is enacted to read:

118 **54-23-106. Objections -- petition to Public Service Commission by a railroad.**

119 (1) If a railroad objects to the proposed crossing due to the proposal being a serious
120 threat to the safe operations of the railroad or to the current use of the railroad right-of-way, the
121 railroad shall provide written or electronic notice to the fiber optic carrier of the objection and
122 the specific basis for the objection.

123 (2) (a) If the parties make good faith efforts to resolve the objection, and are unable to
124 resolve the objection, either party may petition the commission for assistance via mediation or
125 arbitration of the disputed crossing application.

126 (b) The petition shall be filed within 60 days of receipt of the objection.

127 (3) If a petition is filed under Subsection (2), the commission shall issue an order
128 within 120 days of filing of the petition.

129 (4) An order issued under Subsection (3) may be appealed in accordance with Chapter
130 7, Hearings, Practice, and Procedure.

131 (5) The commission shall assess the costs associated with a petition equitably among
132 the parties.

133 Section 7. Section **54-23-107** is enacted to read:

134 **54-23-107. Objections -- petition to Public Service Commission by a fiber optic**
135 **carrier.**

136 (1) (a) If a railroad imposes additional requirements on a fiber optic carrier for crossing
137 the railroad's lines, other than the proposed crossing being a serious threat to the safe
138 operations of the railroad or to the current use of the railroad right-of-way, the fiber optic
139 carrier may object to one or more of the requirements.

140 (b) The fiber optic carrier shall provide written or electronic notice of the objection and
141 the specific basis for the objection to the railroad.

142 (2) (a) If the parties make good faith efforts to resolve the objection, and are unable to
143 resolve the objection, either party may petition the commission for resolution or modification
144 of the additional requirements.

145 (b) The petition shall be filed within 60 days of receipt of the objection.

146 (3) (a) If a petition is filed under Subsection (2), the commission shall determine, after
147 notice and opportunity for hearing, whether special circumstances exist that necessitate
148 additional requirements for the placement of the crossing.

149 (b) The commission shall issue an order within 120 days of filing of the petition.

150 (4) An order issued under Subsection (3) may be appealed in accordance with Chapter
151 7, Hearings, Practice, and Procedure.

152 (5) The commission shall assess the costs associated with a petition equitably among
153 the parties.

154 Section 8. Section **54-23-108** is enacted to read:

155 **54-23-108. Existing agreements.**

156 Nothing in this chapter prevents a railroad and a fiber optic carrier from continuing
157 under an existing agreement, or from otherwise negotiating the terms and conditions applicable
158 to a crossing or the resolution of any disputes relating to the crossing.